A

VIEW

Of some part of the

REGULATION

OF THE

CHANCERY

WITH

The Inconveniences and Mischiefs which contrary to the minde and good intentions of the Authority which Ordained it, will inevitably follow upon it.

Humbly presented to the Parlament. written By Fabian Philipps Esqr

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SECT. 1.

That from and after the two and Twentieth day of October One Thousand six hundred Fiftie and foure, there shall be a certaine number of Atorneys in Chancery. not exceding Threescore, who shall be nominated by the Master of the Rolls, out of such of the present Clerks in the Six Clerks Office of the Chancery, or others, as shall be of ability and honesty (and from time to time in case of death, or remove all, to be supplyed by his nomination) who being approved by the Lords Commissioners shall be by them sworn Attorneys in the said Court, and shall receive Three shillings four pence Termly Fée, which formerly the Six Clerkes received, and shall solicite and manage each Clients Cause without receiving any more for their paines of solicitation then the said Fée of Three shillings foure pence.

THE number of 60 Attorneys in the Six Clerks Office, will not be enough for the busineſs, though the undoing of ſo many Supernumeraries and their Families, as will be undeſervedly undone and ruined by it, could be diſpenced with. *Ad Sect. 1.*

For if they ſhall be (as they are now) only directing and officiating in Clients

buſineſs, within the virge only of the generall Office, and from one of the Six Clerks Office to another, and employ themſelves only in the taking in of Bills, Anſwers, and Pleadings, Filing and copying of them, giving of Rules, making out of Commiſſions and Proceſs, and many other things which the Clients, though they have Sollicitors of their own, doe daily ſtand in need of, but will be leſs then the number, which now cannot be wanted in the general Office of the Upper Bench, or the three Prothonotaries Offices in the Court of Common-Pleas, whete (they being not ſtinted) there are beſides a multitude of Attorneys that attend thoſe ſeverall Courts, at leaſt Forty Maſter, or officiating Clerks of the like nature in every Office; or then are in the Court of Exchequer, where the Two Remembrancers, Clerk of the Pipe, and Clerk of the Pleas, have altogether double, if not treble the number, though their buſineſs be not ſo much all put together, as what is acted in the Six Clerks Office; and would be yet a great deal more too little, if they

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ſhould be put to act all the parts of Sollicitors, in going to and fro to their Clients, and their Counſell, and to Offices, drawing and engroſſing of *Bills*, Anſwers, Replications and Rejoynders, finding out and ſpeaking with Witneſſes, drawing Affidavits and Interrogatories, attending Commiſſions in the Country, bringing Witneſſes to be examined in Court, making of breviats for Motions and Hearings, and attending them, entring of Orders, and ſearching of Records, and the like, which Fifty times more in number, reckoning the Clients themſelves (who many times look after their own buſineſs) or their Attorneys, Sollicitors, or Servants, are not now ſufficient to diſpatch, or if the Clients would be content to have no other helps or Solliciters, and that there were any poſſibility of thoſe Threeſcore Chancery Attorneys diſpatching and doing all the buſineſs which belongeth to ſitting Clerks in the Office, and all what is done by the Clients themſelves, or their Attorneys or Sollicitors abroad, there would then be a neceſſity ſurely of allowing them

them more then Ten Groats a Term fee for every Cauſe, when every Sollicitor or Attorney hath Ten ſhillings at leaſt, and many of them Twenty ſhillings for their only Term Fee, beſides the drawing of *Bills*, Anſwers, Replications, Rejoynders, and *Interrogatories*, for which they have Eight pence a ſheet drawing, and Foure pence a ſheet ingroſſing, Two pence a ſheet for breviating of Depoſitions, which are ſometimes 5 or 600 ſheets; beſides the making of other Breviats and Writings, which in every Cauſe are of greater profit and benefit to them, and are the only ſupport of their care and callings; for if the Chancery Attorneys ſhall be thus and at once made to be the Sollicitor abroad, and the Chancery Clerk within, and have only Ten Groats a Term fee, which as ſom Cauſes may happen, will not in a dirty Term bear the charge of mending of their Shooes and boots; none but witleſs or wicked, or men whoſe poverty may invite them to any kinde of corruption, or ſinfull advantages, will employ themſelves and their time in ſuch a cold and diſcoura-

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ging kind of endevour. And there being no poſſibility that the People ſhould take the confining of them and their buſineſs to Sixty Attorneys or Clerks (which Thrice ſix hundred cannot well finiſh or undertake) to be for their good, when twenty of them ſhall tarry a whole day to ſpeak with their Clerk, who as a Sollicitor muſt ſometimes be all day abroad about one of his Clients buſineſs, it will be very probable that beſides the diſcontent and diſorder, and ſo many as yet unforeſeen inconveniences which may happen to the Clients by it, they muſt to help themſelves be neceſſarily enforced to paſs by this order as no order, and though they pay the Clerk his Ten groats Fee, keep as they doe already their own Attorneys or Sollicitors to look after their own buſineſs.

SECT. 5.

That no subpæna shall be sued out, untill a bill be filed and a Certificate thereof brought into the Subpæna Office, under the hand of the chief Clerke or his Deputy, for which Certificate the said chiefe Clerke shall receive no Fee.

IF delay of *Justice*, or remedy to those that aske it be an evill or damage to the people, and *dispatch* or expedition a benefit, as they have been by all people and Nations hitherto experimented to bee *Ad sect.* 5.

The taking out of a *subpæna* before a bill filed, or a certificate had thereof, can have no considerable *inconvenience* in it, and we are sure was never yet complained of in any *Parliament*, where generall grivevances usually are to be heard of, and need now no great complaint of any particular man, to the Court out of which it issues for

that of courſ they have a *proces* granted, for their coſtes aſſoon as they aske for it, and are moſt commonly very well pleaſed with it, but if it were (as it is not) otherwiſe, it would not be ſo univerſall, a *Grievance* as the taking away from a third part of ſuch as ſhall be Complainants in *Chancery*, the benefit) which is demonſtrable by the number of ſix *thouſand* bills, or there about; put in this laſt yeare of Nine thouſand *Sub-pœnas Ad reſpondendum*, which iſſued forth) of compounding or bringing their ſuites to an end or agreement for two ſhillings and ſix pence or three ſhillings charge, beſides what a meſſenger if the Plantiffes own Servant doe not doe it will according to the nearneſs or remoteneſs of the defendants dwelling have for ſerving it, and the enforcing them to three or four *pounds* or a great deale more charge in putting in the Bill beforehand, when there many times doth upon agreement happen, no neceſſitie at al to put them in. For if ſome of the intents, preſcripts & punctualities of the laws ſhould not ſometimes be diſpenſed with-

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all for an easier way to the end and *purpose* of it, there would be more complaining of the delays in the Law then then there are now, but of the *fancied* greiveances of many a part of it, and by the same reason we would now have the bill first put in, we may propose that every bill or petition should first be read by the Lords Commissioners, (as Sir *Thomas Moore* the *Lord Chancellor* in a paucity of busines in some one perhaps adiourned Terme in the Reign of King *Henry* the eight is reported to have done) before it be filed, and that every declaration or plea at Law, should be first read and perused by Judges before they be delivered or entred, or that every proces or writ in *Chancery* should by examiners who had anciently an Office in the Chancery for that purpose, as *Fleta* and the Statute of 18. E 3. doe informe us be first perused and examined to a word syllable or title. Wherefore as in the case betwixt *Boaz* & the kinsman of *Ruth* we find her personal comming to the Gate, or place of justice untying of his shoolatchet, and

Ruth cap. 4. *v.* 7, & 8.

and ſpitting in his face upon his refuſall (though a *preſcript* form of the Law made by God himſelf) was omitted, the wiſdome of our Lawes did in the leavynig of fines which are of a higher nature and *conſequence* then a *Chancery* biill allow the acknowledging or concord of the parties which is one of the latter acts or things to be done in a *fine*, to be before one *Judge* of the Court of Common Pleas, when the Statute *de modo levandi Fines* expreſſely orders it to be before four at the leaſt, and not otherwiſe, nor without a writ Original and the *Dedimus poteſtatem* or Commiſſion to take ſuch acknowledgment when it can not be done in Court or before the *Lord Chief Juſtice*, to mention a writ of *Covenant* depending, when it is not at all ſued out, but is moſt commonly done in a Terme after, and when the fine it ſelf comes to be ingroſſed is ſaid to be done before all the Judges of the Court, when if by Commiſſion it was not done at all before them, but certified by other unto them, & if not by Commiſſion was done or leavied, but before the *Lord chief Juſtice* only

Deut 25. *v.* 7 8. *and* 9.

18 *E.* 1. *ſtat. De modo levandi Fines.*

only warrants of *Attorney* which naturally and according to order after the Originall ſued forth, ought to be the firſt act or thing which is to be done, in a ſuite in the *Common Pleas*, are put in no ſooner then the Middle of the *Suite*, or after a great deale of Procedings had in it; Executions are ſent out after the paper book, ſigned by the *Prothonotary*, though the Judgment be afterwards entred upon the faith and care of the Officer; Thouſands of writts of *Capias* which ſhould only be made and grounded upon Originalls, firſt had out of *Chancery*, are in every vacation for expedition and diſpatch of Juſtice ſent out upon the truſt and care of the Officer, who is truſted therewith; though the *Originall* be had and ſued out afterwards. Declarations and Pleas which were antiently drawn and alledged in *Court* and at Barre, and ſhould be firſt entred upon record are now delivered of courſe from one Attorney to another, & entred afterwards plaintiffs, that in the raigne of E. 1 were regularly to come at the retorne or eſſoine day of the writ and

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expect or tarry *per tres dies*, as *Hengham* saith; *viz.* the Essoine day, the *Exception* day, and *Returna Brevium* day; and upon the *fourth* day as the *Rolls* or Entries keep the form to this day, to proffer themselves against the Defendant, does now never or seldome come at all in proper person, or by Attorney at those days, but do leave it to their *Attorneys* to come when they will, or can afterwards, to take the benefit of that more dispatching course, which after ages have allowed them: The Exchequer process of *Subpœna*, are sent out before any Bill or Information first filed. The Court of *Wards*, Court of *Requests*, and Courts of the Marches of *Wales* and the North, did the like, without any Complaints as to that particular ever made against them; in the *Civill Law* and *Ecclesiasticall* Courts, Monitions or *Citations* are sent out before any *Libell* or *Allegation* put in: An Action of trespas for taking away of Goods is maintainable by an Executor before a Will proved: Writs taken out in a Vacation, are tested or dated by a neces-

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ances at Law are ſealed and executed with ſeveral dates at one & the ſame time; for the Law doth in all theſe, & many more which might be inſtanced to the like purpoſe, but follow the rule of *Bracton*, who lived in *Henry* the third's time, now almoſt four *hundred* years agoe, which was that *non ſemper debet obſervari ſolemnitas Attachiamentorum* (which in his time, and by the ſtatute of *Weſtminſter* the 1. *cap.* 44. was two *pone's* before a *Diſtringas*, and is now but one) but in regard of priviledge, or in favour of ſuch as were then to goe to the Warrs in the Holy Land, or of Merchants whoſe buſineſs required haſte, or for neceſſity *in quibus caſibus, aut conſimilibus*, ſaith he, *Statim præcipiatur Vicecomiti quod habeat Corpus*; That he have or take the body to anſwer the Plaintiff, &c. & may better do it in *Chancery*, in putting in of Bills, for that the very form and words of the *Sub-pœna*, are but to command the Defendant to anſwer to ſuch things as ſhall be objected unto him.

And if it ſhould not be ſo, would perplex

plex and throw the People into many inconveniencies; as where a man is *fugitive*, or going beyond Sea, or will abſent himſelf on purpoſe, becauſe he will not be ſerved with a *Subpœna*, he ſhall not, becauſe the *Bill* cannot be firſt put in, be bound up, as he might otherwiſe be, to a contempt, or to ſtand to the Decree of the Court by being firſt ſerved with a *Subpœna*, if he ſhall goe away before he anſwer; or be very hardly, or with great charge or difficulty be afterwards to be found out to be ſerved, or be in a place where he values not the Orders or Proceſs of the Court; and if he doe not leave *England*, or doe but ſhift from place to place, the Plaintiff may whilſt he is putting in his Bill, if the Defendant have not a conſtant Reſidence, loſe an opportunity he might otherwiſe have of ſerving him.

When the cauſes or occaſions of *Chancery* Bills doe not alwayes happen in the beginning, or at all in the long or Lent vacations, nor alwayes finde the *Plaintiffs* in a capacity or poſſibility of diſpatching,

or putting in their Bills time enough to ſerve their *Subpœna*'s before the beginning of the *ſubſequent* Term.

When moſt of the neceſſities and reſolutions for ſuch as are Defendants at *Law*, to become Plaintiffs in *Chancery*, doe happen in the Term time, when the preſſures of the Law and Plaintiffs at it, are upon them, and will be now more then formerly, if no Injunction ſhould, as the 29 *Section* of the *Regulation* directeth, be granted after a Plea pleaded at *Law*, or Rules given to ſtop a *tryall* at Law, or any Pleadings or proceedings preparatory to a tryall, there being but one Term in the four in every year that hath a *Months* continuance, and then it will be eaſily conjectured, what, and how many perplexities in ſuch a ſhortneſs of time may aſſail and fall upon the Defendants at *Law*, when in ſuch a *term* they ſhall not have at the moſt but little above three weeks time, and moſt commonly not a fortnight to prepare and put in their Bills in *Chancery* as they ſhall need them, and take out their *Subpœna*'s and ſerve them,

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which is to doe two things at once and upon a ſudden, when one of them before would ſerve the turn, and to look out the Plaintifs at Law, who if they do not wilfully abſent themſelves (which for a few daies may be done without much trouble) may be one hundred or two hundred mile from *London*; and if they cannot get them ſerved in that ſhort time, be undone at Law, & loſe the benefit of that relief and equity they ought to have had, and could heretofore not have failed of.

And when in the long and *Lent* vacations, which are half the year, or the greateſt part of it, the Plaintifs own Councel, or other good *Lawyers* will be either at their retirements, or eaſe in the Country, or ſo buſie in the *Circuits* or other Law affairs, as without great trouble and charge to the Plaintifs, they cannot be ſuddenly conſulted with, the fortnights vacation betwixt *Eaſter* and *Trinity Term* is ſo ſhort, as conſidering the buſineſs which is a week alwaies very much after the end of every Term affords them little time; and if the Plaintifs ſhall be

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thus for the moſt part reſtrained only to the Terms, and not have the benefit of the vacations as well as the Term, to ſerve their *Subpenas* in, they muſt be put to do all, or the moſt part of their buſineſs in the Term times, which all put together, do of *fifty and two*, not amount to above 14 weeks in every year, the one half wherof are in *winterly* and dirty weather; and of a three weeks or ſhort Term, as in *Trinity*, or *Candlemas* Terms, the returns will be paſt, or the time of ſerving the *Subpenas* too ſhort, before the Bils can be got ready, and then their Bills and *Subpenas* may after a *Trinity* Term, tarry almoſt half a year longer; or if after a Candlemas Term, a quarter of a year may moſt commonly be ſpent, before any more can be done in it, beſides the loſs of the benefit of *fifteen* daies for making out Attachments or proceſs of contempt, which may not ſeldom happen upon ſuch a putting in of Bills before hand, if it ſhall not be before the latter end of a Term, or at the beginning of ſhort Terms; and if they muſt put in their

Bills

Bils anſwerable unto, or according to the haſte they ſhall be many times put unto by ſerving their *Subpœna's* (which in the Lent or long Vacations cannot be ſealed but once in a Month or Fortnight) after the Bils put in, muſt do it ſo ſuddenly or unadviſedly, as to make it full of errors or miſtakes, or be put afterwards to the trouble of *Motions* & *Petitions* to amend them.

All which, and many more inconveniences which ſuch a *ſtreightning* of the Plaintiffs whilſt they fly from the rigor of the *Law*, and the *gripes* or *paws* of oppreſſors will daily diſcover themſelves, will if put into the *ballance* with thoſe little or none at all which have hapned, or can come by taking out and ſerving the *Subpœna* before the Bill be put in, ſufficiently inform us, there will not be *reaſon* enough for this Innovation, or turning the ſtream of *Juſtice*.

To prevent which, there is further to be offered to conſideration, that this *aſſault* upon that approved beneficiall way hitherto uſed, of putting in the Bill after the *Subpœna* ſerved (which is only occaſioned

oned by the praying of the proceſs of *Subpæna* in the uſual form & cloſe of the *Bill*) may be eaſily *quieted* by omitting in the Bill the prayer of proceſs of *Subpæna*, which in Writs which are *remediall*, or to be of *courſe* is needleſs, and the Bill only made as a Narrative or Declaration of the fact or matter complained of; which if the Bill ſhall be (as the form yet remains) directed to the Lords Commiſſioners, will be no otherwiſe then as Bills, which at Law are now as anciently they were heretofore exhibited in the Courts of *Common Pleas* and *Upper Bench* againſt Officers or Clerks, and priviledged perſons which conclude *Unde petit remedium, &c.* or if without a direction to the Lords Commiſſioners ſhall be onely as the *Declarations* are now in the Courts of Common Law, with *Unde quæritur*, or *Inde producit ſectam, &c.* which are not put in untill the Defendants doe appear to the actions.

There cannot ſo much as a pretence or colour of reaſon *lye* in the way to hinder the Plaintiffs in *Chancery* from that liberty and univerſall *rule*, and way of the Law of *England*, as well as that of all other *Nations*, of taking out their proceſs firſt, and putting in their *Declarations* or *Complaints* afterward, which if done within a reaſonable time after the Defendants apparence, is all that any *Judges*, or *Court*, or *Law*, or Reaſon ever required of them.

SECT. 16.

That no Witneſſes ſhall be examined in Court, but by one of the Examiners themſelves, unleſs in caſe of ſickneſs, and that one of the Examiners ſhall examine the Witneſſes of the Plaintiffs part, and the other the Witneſſes of the Defendants part, if any be produced to be examined in Court, and that no Clark in that Office ſhall be a Sollicitor upon pain of loſing his place.

IN the Parliament of 18 *E.* 3. the Clerks of the *Chancery* (when the buſineſs was far leſs then it is now) were not denyed the help of their under *Clerks*, or others to aſſiſt them, and many other minſteriall *Officers* in the adminiſtration of Juſtice have both before and ſince that by the allowance of *Parlaments*, and the uſage and cuſtome of ſeverall Courts of Juſtice, had as we know their Deputies, or ſuch as they were to *anſwer* for under them. *Ad Sect.* 16.

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SECT. 16.

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Ad Sect. 16.

answer for under them.

oned by the praying of the proceſs of *Subpæna* in the uſual form & cloſe of the *Bill*) may be eaſily *quieted* by omitting in the Bill the prayer of proceſs of *Subpæna*, which in Writs which are *remediall*, or to be of *courſe* is needleſs, and the Bill only made as a Narrative or Declaration of the fact or matter complained of; which if the Bill ſhall be (as the form yet remains) directed to the Lords Commiſſioners, will be no otherwiſe then as Bills, which at Law are now as anciently they were heretofore exhibited in the Courts of *Common Pleas* and *Upper Bench* againſt Officers or Clerks, and priviledged perſons which conclude *Unde petit remedium, &c.* or if without a direction to the Lords Commiſſioners ſhall be onely as the *Declarations* are now in the Courts of Common Law, with *Unde quæritur*, or *Inde producit ſectam, &c.* which are not put in untill the Defendants doe appear to the actions.

There cannot ſo much as a pretence or colour of reaſon *lye* in the way to hinder the Plaintiffs in *Chancery* from that liberty and univerſall *rule*, and way of the Law of *England*, as well as that of all other *Nations*, of taking out their proceſs firſt, and putting in their *Declarations* or *Complaints* afterward, which if done within a reaſonable time after the Defendants apparence, is all that any *Judges*, or *Court*, or *Law*, or Reaſon ever required of them.

SECT. 16.

That no Witneſſes ſhall be examined in Court, but by one of the Examiners themſelves, unleſs in caſe of ſickneſs, and that one of the Examiners ſhall examine the Witneſſes of the Plaintiffs part, and the other the Witneſſes of the Defendants part, if any be produced to be examined in Court, and that no Clark in that Office ſhall be a Sollicitor upon pain of loſing his place.

IN the Parliament of 18 *E.* 3. the Clerks of the *Chancery* (when the buſineſs was far leſs then it is now) were not denyed the help of their under *Clerks*, or others to aſſiſt them, and many other minſteriall *Officers* in the adminiſtration of Juſtice have both before and ſince that by the allowance of *Parlaments*, and the uſage and cuſtome of ſeverall Courts of Juſtice, had as we know their Deputies, or ſuch as they were to *anſwer* for under them. *Ad Sect.* 16.

And ſuch as had no *Deputies* allowed them by grant or cuſtom (as the *Filacers* and *Exigentors*, ſome of the *Prothonotaries* and many other Officers in the Court of Common-Pleas, with many Offices in the Chancery, and ſome other Courts at *Weſtminſter* were never notwithſtanding forbid the help of their under Clerks, for whom the Law made them to be as reſponſall, as if they were their Deputies, (the difference betwixt *Deputies* & under *Clerks* being no more then that ſuch a power of deputation gave the *Officer* a perpetual or conſtant licence or liberty to be abſent at all times, or as often as they would, which they that had not that favor might not adventure on.)

The Examiners therefore in *Chancery*, who by no leſs authority then that of a large *allowance* of time and *preſcription*, and an Ordinance of *Parliament* in the Reign of King *R.* 2. for their enjoying of all *priviledges* and immunities, which are due to the Officers and Clerks of that Court, as wel as by their own deſervings in the places which they now hold, may certainly

tainly claim to be no worſe uſed then their *predeceſſors*, and other Officers and Clarks of the *Court*, doe humbly *enquire* the reaſon why they ſhou!d be thus caſt under an impoſſibility of taking all Examinations with their own *hand*, or acting all in their own perſons, when no man elſe in the Chancery in this new *Regulation* is enjoyned to doe it; and when no age or time paſt either in *Parliament*, or any former regulation made by the Lord *Chancellors*, Lord *Keepers*, or Lords *Commiſſioners* of the great Seal of *England*, did ever think fit to make their Freeholds and Places, which ſhould be as a comfort and reward to them for their attendance and labours, to be without any fault or miſdemeanour charged or proved upon them, a meer impoveriſhing and *impoſſible* way of getting a *Livelyhood*; and why they alone of all men in all Courts of law and Juſtice either here in *England*, or in any Nation of Chriſtendome, ſhould be thus rigorouſly dealt withall.

When the Clerk of the *Parliament*, and *Clarks* of the Councell of *State* have the help

help and benefit of their *Clerks* & Assistants,& are not put to claim no more profit or reward then for that which they themselves write with their own hands, all *Officers* in the Courts of Law and Justice at *Westminster*, and in all inferiour Courts in the Nation, all Offices and places in the Civill Law, or Courts of the Admiralty. and all other Officers in Chancery the Examiners excepted are not thrown under so hard a *fate* or condition, but may where Deputies are not allowed them, have the help and benefit of such as write under them.

When the Clerks of the Pettibag in Chancery, have their Deputies the Three Clerks in Chancery, may have the help of the Sixty *Attorneys*, and the Sixty Attorneys are not excluded the assistance of their Servants or *Clerks* under them.

When the *Registers* in *Chancery*, though by the new Regulation forbid to have Deputies, are not denied the help of those that may draw or write, or enter Orders for them, and Mr *Scobell* who is at once a Clerk of the *Parliament*, Clerk of the

Councell

Councell, and a *ſenior* or principal *Regiſter*, is not likely to be divided into ſo many parts as to be able to ſerve or ſupply all at once, eſpecially when the *Termes* or *Parliament* ſhall at one and the ſame time call for a more cloſe attendance, intends ſurely to partake of that rule and law of *God Nature*, and *Nations*, *Qui facit per Alium facit per ſe*; *He that cauſeth or doth any thing by another, doth it as much as if he did it by himſelf.*

And when a *Taylor* or *Shoomaker*, who do now drive a Trade perhaps with twenty Servants or Journey-men under them, and get two or three hundred *l.* a year by them, would not eaſily be ſatisfied with that Law or Order ſhould reſtrain them to that onely which they work with their own *hands*.

And though the examination of witneſſes be ſuch a ſpeciall part of the *Judges* own Office, and is of ſo great a concernment & truſt, as it is to be concredited but to a few, yet it is not unknown to thoſe that have ſpent any time in the Law, or practiſe of the Courts of Juſtice, with

with what great care, diligence and fidelity the Examiners and their Clarks doe take the Examinations of Witneſſes, keep the Records thereof, and by a conſtant and daily attendance both in the Termes and Vacations, give a willing and ready diſpatch to all that are brought unto them, that as great and as ſpeciall parts of Juſtice heretofore have been intruſted in the adminiſtration of it, to the care of ſubordinate Officers, and that the Examinations of perſons upon Interrogatories upon matters of contempt, are by *Judges* at Common Law left to the *Prothonotaries* or their Secondaries: The Clerks of the Barons of *Exchequer* are examiners of *Witneſſes* upon *Engliſh Bills* and Proceedings in that Court, the Examiners of Witneſſes in *Committees* doe it ſometimes by their Clerks; and that in the Examiners Office in *Chancery* all their examining *Clerks* are *ſworn*, which makes them as to the buſineſs of examining, to be uſefull in preparing of the Examinations, which are the ſame not to be perfected or ſubſcribed or finiſhed but in the preſence of the Examiner

miner himſelf, in regard he is anſwerable for his Clerks, might be a ſuffificient *ſatisfaction* to the order of this *Regulation*, viz. That no witneſſes ſhall be examined or prepared, but by one of the *Examiners* themſelves, unleſs in caſe of ſickneſs.

For to reſtrain it otherwiſe, will beſides the great delays which will happen to Clients, and their witneſſes, in their attendance and diſpatch when ſo many ſhall be examined by the Two Examiners to be themſelves, and many other great inconveniences which may fall upou the people by being debarred from examining their witneſſes in Court, will but too much contribute to the evil deſignes, of ſome under Clarkes if the Six-Clarks Office, who for their own gain of making out Commiſſions to examine witneſſes (which muſt needs be many more then are now) when the Two Examiners, of the Court ſhal not if they ſhal be reſtrained not to examine any but ſuch as they ſhall themſelvs be able to do, be able to diſpatch the tenth part of ſuch as ſhall come to be examined

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could instead of being examined in Court at the Offices, be content to set up a course of *Examining* Witnesses by *Commissions* at the *Popes-head* Tavern, or *Five Bells*, or all the *Tavernes* and *Ale-houses* in *Chancery*-lane, or the Streets or *Allies* adjacent, where *Sollicitors* or such as the Plaintiffs or Defendants shall have a mind to, may be made *Commissioners*, and by managing and attending the examination of Witnesses with Good-cheer, Wine, and *Tobacco*, so mould and make up the Testimonies or Depositions, with that or some other unlawful tricks or *Artifices* as that *Truth* shall be sure to go home again either not set down at all, or so confounded and *disguised* as it shall not at all, or very little avail such as hoped to finde relief by it, and the *Depositions* long before publication made, to be the talk or discourse for every *Tavern* and Ale-house boy, and *Interrogatories* added, and *Witnesses* brought off or on, as the craft or knavery of the Factors or Agents in the cause shall finde to be most conducing to their purpose.

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Thoſe therefore that ſhall rightly conſider the difference betwixt a certain and careful examination of Witneſſes in *Court* and an *extravagant* and *careleſs* way of doing it by *Commiſſion* in the *Country*, and by how much worſe it may be to have it done by Commiſſion in *Chancery*-lane, or in *London*, then it will when it ſhall be more remote in the *Country*, the two *Examiners* being reſponſal for themſelves and their *Clerks*, and beſides, being liable to Actions which may be brought againſt them for miſcarriages have their *offices* and places ſubject to forfeiture, and do lye at ſtake for them, and *Commiſſioners* who are moſt commonly of a meaner eſtate, and are leſs *reſponſal* againſt whom the party grieved can have no Action or Remedy and betwixt ſuch as are always honeſt and *experienced Examiners*, and the *Commiſſioners* and their *Clerks*, who are or may be a great deal leſs skilful and experienced, and for one time in which they ſhall happen to be able, will be *twenty* times to that very weak or ignorant, and at no time ſo able and experienced in the Rules and Or-

ders of the Court as they and their *Clerks*, who for many yeers together have done nothing elſe but attended and *obſerved* it, may eaſily be perſwaded to believe the many ſad effects and conſequences may happen by this new way to the people of this Nation.

For notwithſtanding that ſome Commiſſioners were in the Reign of King *James* fined and puniſhed in *Star*-chamber, for indeavouring to ſmother and ſuppreſe *Depoſitions* or Teſtimonies, there are yet many known and certain abuſes commirted in the way or courſe of *Commiſſions*, not onely in the choice or election of *Commiſſioners*, who are purpoſely choſen, and intend to be *Champions* or *Advocates* for the ſeveral parties, but in the manage and execution of *Commiſſions*, in which, if they happen to be careful and cunning *Commiſſioners* they plot, wraſtle, and tug one with another for *Maſtery* how to ſuppreſs or enlarge the Depoſitions, or puzzle or perplex them in the penning or wording of it, or if ſome of them are lazie or ſleepy, which eaſily happens after a full dinner,

dinner, or ſpend their time in taking *Tobacco*, or trifling, or not mind or underſtand what belongs to the dutie of Commiſſioners, they do thereby give the Commiſſioners on the oppoſite ſide the oportunity or advantage of doing what they liſt, when witneſſes being prepared and inſtructed in the ſame houſe, or near adjoyning rooms by the parties or their agents, are not ſeldom alſo brought privatly to a Commiſſioner on that ſide on which he is duced to be laid right, who when he is gon again into the *Commſſion* room, is ſure to manage him by a nod, or beck, or wink of the eye, or ſome words intimating how to go on, or ſtop, or remember no further; and if the *Clerk* to the Commiſſion be one of the Commiſſioners *Clerks*, or that one of the ableſt of the Commiſſioners do either by craft or neceſſity, take upon himſelf the ſetting down the depoſitions, the *Bowle* will then be ſure enough byaſſed, and run on his ſide, howſoever the parties or their *Sillicitors* will have ſo much favour of their own Commiſſioners, as to tell them the drift or ſcope of the Croſſe

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Interrogatories, or to ſhew them the *Interrogatories* themſelves, and at their ſliping out or into the Commiſſion *Chamber* upon pretence of going to make water, or to ſpeak with ſome body, or to walk in the Garden, are ſure either at night, or at noon, or at ſome by *Turn* or other, to know how the cauſe or matter goeth, and if none of the *Commiſſioners* do, it will not be omitted to be done by the *Clerk* that takes the depoſitions, or the Clerk that engroſſeth them, who are moſt commonly ſome pittifull poor writers, in the place where the *Commiſſion* is executed, or a Pariſh *Clerk*, who can ſcarce write or put ſenſe together, or ſome young raw *Clerk*, or ſome old *fadling* one, ſo as if the Clerk happen to be a fool or careleſs, the depoſitions comes to be pittifully mangled or miſuſed, or if crafty or cunning and made by a piece of money, to be altogether leaning on the one ſide, there no ſooner comes a *Truth* from any witneſs which may make againſt his *Patron*, but he throws it under an intricate or perplexed *expreſſion*, or puts

ſome

ſome word a croſs to trouble or confound the meaning of it, or omits or forgets to ſet down what makes againſt his friend, or enlarges and *quickens* all that may make for him, and as ſure as there is a good dinner, Wine, *B*eer, and Tobacco enough, which makes moſt commonly no ſmall *impreſſions* upon a Witneſs, for, or towards the party that is at the charge of it, *publication* paſſeth up and down the houſe and yards every hour of the day &, ſo that which ſhould be made a carefull and ſecret inquiſition or ſearch after the truth, proves to be no better then a skirmiſh or controverſie with it, and a muzling or ſtopping of the mouth of it; and is ſo certainly and wofully experimented by thoſe that know or obſerve any thing, as the moſt underſtanding ſort of people do find it to be farre more ſafe and advantagious for the cauſe and *Client* to have the witneſſes to be examined in *Court*, then by a *Commiſſion* in the Country, which is more chargeable to the *Client*, all things conſidered, then to examin witneſſes by Commiſſion,

which

which with the charge of the *Commiſſion* fee, and *travelling* to the place where it is to be executed, of diet and horſe-meat for the Commiſſioners and Witneſſes, with what muſt be given to the Commiſſioners (who do now begin to look for money or gifts for their pains, and take them) and of *Clerks* will render the charge of the *Copy*, which was *eight pence* a ſheet in the ſix *Clerks* Office to be a great deal more then the 12d a ſheet, and half a crown for every Witneſs, which is now paid to the *examiners*, with the charge bringing them to *London*, if from no far diſtance, will amount unto, with all the *niglings* and *feats* which are uſed at the examining of witneſs by Commiſſion, eſcaped into the bargain, which might rather incite the people of this Nation to deſire to have their witneſſes examined in Court by the *Examiners*, who are by this Oath to examin all that ſhall be brought unto them, where the truth of their cauſe ſhall not be ſo aſſaulted or miſuſed, but be entertained by the care and fidelity of truſty and *unbiaſſed Officers*, and lodged

in

the boſome and *Records* of the Court, till the cauſe ſhall come to hearing, in whoſe Offices the Plaintifs and Defendants being at liberty to examin their witneſſes (for till the latter end of the Reigne of King *H.* 8. there was but one examiner in the Court) might as they pleaſed, ſecure themſelves from any jealouſies or ſuſpitions of any of the examiners being of kin, or in any near relation to their adverſaries; whereas in the way of Commiſſions, the depoſitions do many times come to miſcarry, and if the Duplicate or Counterpart of the depoſitions be ſought for to ſupply, it may after a while be found at the Inn where the Commiſſion was executed (for there it is now adaies only left) imployed in py-paper, or ſticking up of candles.

SECT. 18.

That a Commiſſion to examine Witneſſes, may be iſſued out to be executed at any place as well within ten miles of the City of London. as beyond it, if the party pleaſe.

Ad Sect. 18

ALL which and more inconveniences might well occaſion the order which was made in the ſixteenth yeer of the Reign of King *H.* 8. and other Orders and Rules of Chancery, which were afterwards by thoſe did very well underſtand what might beſt conduce to the good and eaſe of the people to ordain that which without any complaints in *Parliament*, or any where elſe, were till now made againſt it, was held to be *good* and wholeſome for the people, that Commiſſioners ſhould not iſſue out of *Chancery* to be executed within 20 miles of *London*: and that in 36 *H.* 8. by order of the Court no Commiſſi-

on

on was to be awarded to examine Witneſſes, but in caſe of impotency or old age in 7 *Ed.6.* in the caſe betwixt *Vernon* and *Herbert*, a Commiſsion to examine witneſſes, was ſuperſeded, for that it iſſued without order of Court in the third yeer of the Reign of Q. *Elizabeth* in the caſe between the Biſhop of *Coventry* Plaintiff, and *Blunt* Defendant, all that were able to travel, were ordered to be brought up and examined in *Court*, and a Commiſsion awarded into the Country to examine ſuch as were impotent, that in *Anno* 21 *Eliz.* in the caſe betwixt *Robſert* and *Littleton* were to be examined in Court, except ſuch as Affidavit ſhould be made that they were aged or impotent, and for ſuch onely a *Commiſſion*: in *Anno* 17 *Eliz.* in the Caſe between *Rutland* and *Richards* Witneſſes that dwell within 20 miles of *London*, ſhould be brought up to be examined, and that in *Anno* 10 *Ja.* in the Caſe betwixt *Walrond* and *Corham* the L. Chancellor *Elleſmere* denyed a Commiſsion to examine Witneſſes, in regard they lived not far from *London*.

And is so small Virge or Compass for people whose ordinary and almost weekly business brings them many a time in the yeer to *London*, upon their other occasions, as may make it seem a far less trouble then that which the men of every Shire or County in *England*, unless that little one of *Rutland*-shire, are for all such as dwell not within a like little distance of the Shire Town, or place of *Assizes*, without any Complaint in Parliament, or pretence of grievance twice a yeer, as Witnesses enforced unto, nor can such a limitation seem to be needless, when it shall be as it hath been hitherto experimented to be but for the rescuing of truth from the hands of such as would by *Commission* for examining of Witnesses, deform and deface her, and must needs be no small hardship put upon the Lords Commissioners to enquire and find out the Truth of things, whereupon to ground their judgement and Equity out of such a *rubbidge* and heap of *Tricks* and Artifices which are used at *Commissions*, nor can the granting of so many Commissions as will

issue

iſſue forth, if the *Examiners* in their *Office* ſhall be thus *immured* and put to ſtarve it ſelf, will be any thing ſerviceable to the *truth*, which if the people ſhould be put to the trouble and experience of, would it may plainly appear by the Glaſs or Rule of Contraries, if all Witneſſes which are now examined before Judges at Law *Viva Voce* were onely left to be examined by *Commiſſions* in the Country.

SECT

SECT. 19.

That Commissioners for examination of Witnesses shall take an Oath before execution of any Commission to execute the same faithfully and impartially, which each Commissioner is impowered to administer to the other, and the Clerk or Clerks attending such Commissioners, shall take an oath, which is to be administred by the Commissioners, to write down the depositions of the witnesses truly and indifferently without partiality; and a clause shall be inserted into the Commission for that purpose.

Ad Sect. 18 Such a Commission to give power to Commissioners to swear one another, will require a new form, and perhaps find difficulty enough in the framing of it, as being without rule or president, for the Committees of *Haberdashers* Hall, Committees for sale of Land, Committees of Obstructions, and all other Committees were not permitted to swear one another, and Oaths are always to be given by one or more, who as to the Act of *administring* the Oath, are supposed to be superiors to him that takes it, but to make the taker of the Oath to be Agent, and Patient, and both giver and taker

taker of the Oath, to be one and the ſame perſon, at one and the ſame time, and upon a joynt Commiſſion or Authority, is conceived to be ſomething unheard of, and *prodigious* in the Law; and if it could be otherwiſe, muſt needs be very prejudicial to the purpoſe of it, for ſetting aſide that the taking of the Oath by ſuch a kind or way of adminiſtration, and in ſo curſory and ordinary a way, as the giving of it one to another, will be looked upon to be, and may breed a diſreſpect or careleſs performance of it, it may come very much ſhort of the end or intent of it, where two of the *Commiſſioners* of the one ſide ſhal only meet at the execution of the Commiſſion with a reſolution to be partial, and have nothing to keep them from it but an Oath, which they are to give privatly to themſelves, or may omit to give it to one another, or if they do take it in that manner, will be little or nothing at all the more honeſt or conſcionable for it; and if ſome *inconveniences* could by ſuch a ſwearing of the Commiſſioners and their Clerk be prevented,

vented, yet there will be wanting ſome Oath or Tye, alſo to be upon the Commiſſioners, and the taking and ingroſſing *Clerk* not to diſcover any thing of the depoſitions. And if a Commiſſion ſhould be awarded by it ſelf, to ſome other perſons to adminiſter ſuch an Oath, or the next *Juſtices* of peace, or the Major or Magiſtrates of the *Town* or *Corporation*, where Commiſſions to examin witneſſes ſhall be executed, be impowered to do it, moſt part of the Gentry and men of quallity or ſufficiency, will in all probability, when they ſhall find themſelves miſtruſted, be unwilling to be named *Commiſſioners*, or to be put to ingage their ſouls and conſciences upon the requeſt or buſineſs of friends or ſtrangers, and ſo become like Jurors, making all the ſhift they can, not to be troubled with it; and then *Attorneys* or *Sollicitors*, or ſuch as can factor or deal in Cauſes, or have the knack or way of *carrying* them, or common or *ſimple* people which may be as bad, will be the only men which will be made Commiſſioners.

SECT. 38.

That from and after the said two and twentieth day of October, one thousand six hundred fifty four, every Attorney shall keep all and every Affidavits, whereupon he shall make forth any Writ or Process, in his own custody; and shall shew the same to the Attorney of the other side, and suffer him or any other person to take a copy thereof, if he shall require it: And that the senior Register shall appoint a Clerk of honesty and integrity to attend in Court, and at the Rolls, and at Seals, who shall take an Oath before the Lord Chancellor, Keeper, or Commissioners for the Great Seal, to be faithfull in this imployment, and shall receive into his custody all and every Affidavit which shall be read in Court, or upon which any Order shall be grounded; and shall duly file the same, and keep an Alphabet thereof. And in case the party, at whose instance such Affidavit was made, shall have cause to have a copy thereof, he shall pay unto the said Clerk for the same, four pence for the filing, and three pence for every side for a copy thereof; and the other side, or any other person desiring it, may also have a copy at the same rate; and the Register shall have for examining and signing such copy, six pence and no more.

THe filing of *Affidavits*, whereupon many motions, orders, and process of contempt are grounded, and the orderly entring and Calendring them in a Book to *Ad Sect.* 38

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SECT. 38.

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be kept for that purpoſe, whereby to prevent interliniations or alterations, by ſuch as made or carryed them up and down, and the *intricacy* of ſearching or finding them out when they were in the hands of the ſix Clerks, or under *Clerks* of the *Chancery*, or of Attorneys or Sollicitors towards the cauſes, was by the approbation of that grave and learned Lord Chancellor *Elleſmere* upon his long experience in that Court, declared to be a thing uſeful and neceſſary for the eaſe and good of the people, to prevent many ſubtile ſhifts and practiſes, foul abuſes, and indirect courſes which were then ſo commonly uſed, and therefore thought fit only to be done by a particular ſworn Officer, who was to take the charge of all *Affidavits*, and did receive ſo little diſturbance, as an experimented benefit thereof from time to time hath hitherto procured, not only an allowance from the ſucceſſive Lord Chancellors, Lord Keepers, or Lords Commiſſioners of the great Seal of *England*, but alſo the ſeveral Ordinances of the late Lord Keeper

Keeper *Coventry*, and the prefent Lords Commiſſioners for the injoyning of a due and regular fyling of *Affidavits* in that Office, atteſted by a copy under the *Clerk* or Regiſter of the *Affidavits* hand, before any motion ſhould be made upon them, or any proceſs of contempt iſſued out.

And is not denied to be neceſſary by the late Ordinance for the regulation of the Chancery, which ordereth, that a Clerk of honeſty and integrity, to be ſworn by the *Lords Commiſſioners* for the great Seal of *England* to be faithfull to his imployment, ſhould receive and take into his cuſtody and file, and *Alphabet* every *Affidavit* which ſhall be read in Court, or upon which any order ſhall be grounded. But though that declares the uſefulneſs of that Office, it doth not only too much enervate and leſſen the benefit which the people might receive by it whilſt ſuch *Clerk* who might better do the buſineſs at the Office upon ſudden or neceſſary emergencies is ordered by this Section, to attend alwaies in Court to take in ſuch *Affidavits* as ſhall be there offered

offered or made uſe of, when the former orders and uſage of the *Court* did dire& the bringing of copies under the Officers hand, which did much eaſe the Court and Clients in a preparatory way to the determining of Cauſes at one and the ſame time, which would not otherwiſe be done at more, but without any crime or miſdemeanor, or cauſe of forfeiture alleadged or proved, or any legal or judicial proceeding had againſt the preſent Officer, takes away the livelihood or imployment of him who was admitted therein for term of his life, as of his Free-hold, and is known to be of integrity, ability, and ſufficiency, and to have executed it already with good content and approbation of all that have had any buſineſs to do with him, which tending to his utter ruine, and being a thing was never yet done by any *regulation*, is the cauſe amongſt other things of theſe his humble addreſſes, which do offer to conſideration theſe particulars.

That the *Ordinance* being only, as appears by the *Preamble* for the better regulation

lation and limitting of the Jurisdiction of the *Chancery*, to the end that all proceedings touching relief in equity to be given in Court, may be with less trouble, expence, and delay, then heretofore, did not intend the *taking* away any mans Office, and surely if it had, would not have been of the minde of many Acts of *Parliament*, who usually gave recompence to such particular men as should receive any damage in the way or order to a publique good, as upon inclosure, or improvents, cutting of Rivers, drayning of Fens and the like.

That it cannot be for the publique good, to put out one man, to put in and make another; nor to put out an old and experienced *Officer*, to the undoing of him, his Wife, and Children, to put in a yong and unexperienced one.

That the business of filing and entring *Affidavits* was never appropriate to the Registers however it was before the ereting of the Affidavit-Office, sometimes loosely

loosely and carelesly left with them, or the *Registers* or some other Clarkes of the Court, yet it was so very seldom and disorderly, as made the necessity of erecting a particular Office, which this regulation also allows of; for the Affidavits being but as extraordinary *Depositions* (which are voluntarily made and given in by the parties who make them without the strict enquiries of an *Interrogatorie* or the rules of the *oath* which is usually taken upon them to swear the whole Truth, and nothing but the Truth) have no more relation or coherence to the business of a *Register*, then other Depositions have which are kept by the Examiners, and that the *Registers* or any other Officers or Clerks of the *Courts*, who lived at the time of the first erection of the said *Office* being never entituled thereunto, could not if they were now living, make any claim unto it, and that the *Registers* and other Officers and Clerks who are now living, and took their places, but as their predecessors enjoyed them before them, cannot now (if they ever had any right

right unto it, as they had not) pretend any grievance by that which was done by the then *Supreame* Authority, and the consent and approbation of the Lord *Chancellor* who as *Judge* of the *Court* had, without taking away or breaking in upon any Officers Free-hold, as long as they did well behave themselves therein, a power in himself, in order to the well-being and Government of the *Court*, to order and Regulate the business thereof, and was no more then what hath Anciently appeared to have been done in this as well as other Courts in the division of Offices, and appointing of several Clerks to several sorts of business, as the *Custos brevium* in the Court of *Common-Pleas* which hath been an Office usually granted by Letters-Patents from before the Reign of *E.* 1. the Office of *Chirographer* in the same Court, the Office of the *Kings* and Lord *Treasurers* remembrance in the *Exchequer*, the Office of *Custos brevium* and Office of *Prothonotary* in the Court of *Upper-Bench* the Office for pardons and licences of *alienation* in the *Chancery*, and many other

which might here be inſtanced, whoſe particular buſineſs being long before uſed to be done by other Clarkes in the Courts, without any particular allotment or deſignation of them were never ſince thought fit to be recalled and put again into that way of diſorder or confuſion from which by ſuch an erection of particular Offices they were reſcued and put into a better.

And that ſince there is a neceſſity of the Office, there may be more Reaſon and Equity to keep in the preſent Officer, who is known to be honeſt and able, then to put in a new one, who is but hoped or undertaken to be ſo.

As to the Fees which are now taken, they are leſs then what were long ago taken by Clerks and others, and are no more then what were allowed to be taken upon the erecting of the Office, and but proportionable to the labour and care and attendance which do belong unto it, and conſidering the difference of rates and proviſions for houſe-keeping, and other neceſſaries, are much leſs in value, then what they were then; and that the Clerk

of

of the Affidavits ought rather to have the fee for ſigning of Copies, then the Senior Regiſter, for that the atteſting or ſigning of Copies of that which is filed with him who is ſworn, and made an immediate Officer to the Court, doth more properly belong unto him.

That the *Fee* now allowed by this *Regulation*, after three *Pence* a ſide for copying, are leſs then the pooreſt *Scrivener* or Writer in a half or piece of a ſhop will take for Writing of it.

That the Law of property was given & ſpoken by God himſelf in the great terror and dread of an *Earthquake* with Lightnings and *Thunder*, and was written afterwards twice over with his own hand in the Fourth, Eighth, and tenth *Commandment* in the Decalogue, that our Laws, Proteſtations, Covenant and Engagements, and the care and promiſes of all our *Engliſh Parliaments*, and the whole tenor of the Word of God do enjoyn and perſwade the preſervation of it.

And that to take away the property, livelyhood and reputation of any man without

without any crime or charge laid againſt him, or any judicial proof or tryal had upon it, may, as an ill precedent paſs through one mans ruine to another, and ſo to after generations, and many other mens concernments.

SECT. 7.

THe Defendant ſhall not be compelled to anſwer until the Plaintiff, with one ſurety at leaſt, hath acknowledged a Recognizance before a Maſter of the Chancery in Ordinary or Extraordinary (the Sum not to be under twenty Marks) conditioned to pay ſuch coſts to the Defendant in that ſuit, as the Court of Chancery ſhall award, if they ſee cauſe to award any, for which Recognizance there ſhall be paid twelve pence only, and no more, and ſuch Maſter of the Chancery ſhall forthwith certifie every ſuch Recognizance into the office of the Pettibag in Chancery, to be there filed and the Officer there ſhall give a Certificate thereof to the Plaintiff, or his Atturney, upon requeſt; and for the filing ſuch Recognizance, making ſuch Certificate, and keeping an Alphabet thereof, he ſhall have and receive twelve pence, and no more: but where the Plaintiff ſhal be admitted in forma pauperis, no ſuch ſecurity is to be required.

THe denying Equity and Juſtice upon Bills to be exhibited in Chancery, to all that ſhall not be admitted in *forma pauperis*, or cannot by a Recognizance with one ſurety at the leaſt, give caution to pay *Ad Sect.* 7.

ſuch coſts as ſhall be awarded to the Defendant, will be directly oppoſite to the will and ways of God, and the Actions of good and godly *Magiſtrates*, held forth unto us in the Holy *Scriptures*, and contrary to our *Thirty times confirmed Magna Charta*, the *Petition* of *Right*, and all the Laws and *Cuſtoms* (except the Statute of 15 *H.* 6. which for the many inconveniences would follow upon it, repealed it ſelf, and became altogether uſeleſs) of this Nation, and our *Britiſh*, *Saxon*, or other Progenitors, and will not onely be deſtructive to the *Birthright*, Freedom, and Liberties of England, ſo often and ſo much contended for, but produce numberleſs oppreſſions, and inconveniences, and be one of the ſtrangeſt ways of obſtructing and denying of Juſtice, which any *Nation*, either Savage or Civilized, hath yet had the unhappineſs to meet with.

For God whoſe mercy is over all his works, and in the making of his *Tabernacle*, gave himſelf directions for a Mercy ſeat to be betwixt the *Cherubins*, who from his

his own mouth gave a Law and charge; *not to vex or oppreſs the ſtranger, nor afflict the Widdow or Fatherleſs, but to deal kindly with the poor to whom we lend money, or have taken pledge of*, and promiſeth to *hear if they cry unto him*, Exod. 22. 21, 22, 23, 25, 27. & would not have us to *oppreſs our neighbours in buying any thing of them, ſelling any thing unto them*, and commanded the Children of *Iſrael* in all the Lands of their poſſeſſion *to permit a redemption for Lands*, Levit 25. 14, 24. and in caſe where there was no *witneſs*, ordered an oath to be taken by him that ſhould be *complained* of (an early way of *relief* or *Chancery*) appointed by God himſelf) Exod. 22. 10, 11. that is *a refuge for the oppreſſed*, Pſal. 9. 9. and by his own Son, the bleſſed *Meſſenger*, and cauſe of our Redemption gave us that general rule of Juſtice and Equity, *Do as we would be done unto*, which is the proper buſineſs and enquiry of Courts of Equity, cannot be intended to own or delight in any Laws, which ſhall be made to hinder or perplex the oppreſſed in their ſeaſonable ſeeking

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for a relief in Chancery, or to have it made to be so troublesome unto them, as the inconveniences which attend it shall amount to as much, if not more then the remedy they expected. The Officers of the Children of *Israel* who were beaten for not multiplying their oppression, were not debarred from crying unto *Pharoah*, Exod. 5 15. the two women or Harlots came and stood before *Solomon*, and received his Justice concerning the living child, 1 Reg. 3.16. the woman that in the famine of *Samaria* cryed out to the King of *Israel* for Justice against the woman that had eaten of her childe, and refused to boyle her own, 2 Reg. 6. 26, 29. and the Shunamite widdow, who flying out of her own Country by the advice of the Prophet *Elisha*, to avoid the famine, did after seven yeers, cry to the King, and had her Land restored unto her, 2 Reg. 8. 6. were not before they could be heard, put to give security to make out their Complaints, *Mulmutius* our old Brittish King, did so temper his Laws with Mercy, as the Law we yet mention in our *Elegits* or extents

tents after Judgement, not to have the Oxen or Cattle of the Plow seised or taken away for Debt, owns its Original unto him, the first *Edward* a *Saxon* King commanded his Laws to be freely administred, *Edgar* desired they might be conformable to the Divine Mercy, *Canutus* did the like in his Laws, and wills that the poor as well as the rich might enjoy the benefit of them, and would have the weaker and poorer sort taken care of, and to be gentlier dealt withal, *William* the *Conquerer* commanded all inferior Courts under him to do right. And therefore our Laws do to this day in case of delay or defect of Justice, order Writs to remove the Actions, or command them to do right The Jews as *Sigonius* witnesseth, were first to come and make their Cases and Causes of Actions known to an appointed Magistrate, who was to approve and bring it into the Judges, but the plaintiff if he refused might go from one Court to another, till his Action or plaint should at last be received in the Sanhedrin. That Ancient and wise Commonwealth of *Athens*

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gave a free paſſage to all that ſued for juſtice; the old *Romans* who had their Tribunes of the people gates alwaies open to their complaints, did *poſtulare actionem*, demand leave of the *Prætor* to take their actions, but did not give any bail, pay, to coſts, if adjudged to the Defendant. The fierce and warlike *Goths*, who like a Torrent broke looſe, did overrun almoſt all *Europe*, kept open their Courts of Juſtice to all that had need of them; all Nations and people of *Europe*, and the *Turks* and *Perſians*, the *Eaſt* and *Weſt Indians*, and our late *American* Plantations, are not conſtrained to find ſecurity when they come for Juſtice, nor did thoſe late Propoſitions of having *friend-makers* in every Village here in *England*, to make an end of controverſies, offer that as any expedient or way unto it.

That old courſe or way antiently practiſed in our Laws after the *Conqueſt*, of giving pledges to proſecute, which was afterwards for neceſſity, and expedition of Juſtice, turned only to a common form of *John Doe* and *Richard Roe*, extended

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not to any payment of the Defendants coſts.

Recogniſances to perform Decrees in *Chancery* are not often, and then but upon *Bils* of *review*, *retaining*, or *readmiſſion* of a cauſe which hath been formerly diſmiſſed, granting of Injunctions upon bringing in money into *Court*, or ſome other emergent matter which perſwades the *Court* unto it, but never before the Bill exhibited, or at the firſt putting of it in.

Bayles which are put in upon *Audita querelas*, and upon Writs of *Error*, though in the latter of them many *caſes* are exempted, were only called for, in regard that the demands of the Plaintifs at *Law* were become more certain by their *Statutes* or *Judgements*, and that the ſuggeſtions upon the former, might be but a pretence to fly away or avoid the payment of what was due upon them.

For the free born people of *England*, as *Plaintifs*, did never uſe to give *Bayle* or enter into recogniſances before they

could be admitted into the Gates or Courts of Juſtice, for our *Magna Charta* wils that we ſhould have right, and that we ſhould not be denyed Juſtice, our *Chancery* gave out their Writs *remedial* and of courſe, before the Reigne of King *Edward* the *third*, and the Clerks in *Chancery* were ordered to take care that no man ſhould depart thence, without a Writ to be made or *formed* for their remedy; and therefore when every mans action is in the Judgement of *Law* and *charity* to be preſumed good till the contrary be evinced by the Defendant, it may ſeem to be a ſtrange *incumbrance* to all mens affairs, as well as an *obſtruction* to equity, and the *conſcience* of the *Supreme* Authority (which ought to attend its *juſtice*) to deny the Plaintif his Bill in *Chancery*, till he ſhall enter into a *recogniſance* with a ſurety to pay coſts, which is not in every caſe to be ſuppoſed to be likely to be adjudged againſt him, and will be ſo much the more unequal, becauſe the Law, from whoſe neceſſary rigor he flies for relief into the Chancery, did not exact

act a *Bayle* or recognisance from the *Plaintif*, and yet the *Defendant* coming to be a Plaintif in *Chancery* shall not be admitted without a recognisance with a surety to pay the Defendant there, such costs as shall be adjudged unto him, and where Defendants doe in case of suspicion of weakness of *Estate*, and probability not to abide by the Judgement which shall be given against them, do but seldom give Baile before hand to answer the Action, hear the Plaintifs, though rich enough and sufficient, and all but such as are in *forma pauperis*, must give Bayle, or enter into a recognisance, and the Defendants, though they may be altogether insolvent or unresponsal, shall have *Bayle* put into them by the Plaintifs to pay costs, and yet give none themselves, either to pay costs, or to stand to the Order and Decree of the *Court*, which may be to the Plaintif of a far greater concernment, and is with more reason to be demanded of the *Defendant*, for that he comes not into the *Court*, but upon process or when he is stayed by *injuncti-*

on from his proceedings at Law.

Wherefore for the Plaintif to enter into a recogniſance to pay coſts, will, all things rightly conſidered, be as needleſs as troublefome, for when coſts are moſt commonly the leaſt part of that which may happen upon the *Bill* or proceedings, and are but as *acceſſaries* of a ſmall nature to the principal or things complained of, and moſt commonly are awarded to the Defendant; but upon *demurrers* which are not alwaies to the whole Bill, or to all the parts of it, or upon *diſmiſſions*, where the Plaintif upon ſome advantage conceived to himſelf, diſmiſſeth his own Bill, and then he offereth, and willingly payeth the coſts, or where a Bill is diſmiſſed for want of *replication*, or other proſecution, or where it is upon a full hearing, all of which kind or ſorts of diſmiſſions are ſo ſeldom, as we believe it will appear by ſearch and demonſtration, that there is not of ſix thouſand bils which were brought in Chancery this laſt year, above three hundred of all ſorts of *diſmiſſions*, and of them not

above

above one hundred, nor above one hundred upon *demurrers*, that had a ſecond proceſs or attachment made out for the payment of coſts, and when amongſt all the complaints which have been made in *Parliaments* ſince the firſt original or being of them, there cannot be ſhewn one Petition or ſuppoſed grievance of the common people, touching the Plaintifs not paying their coſts in *Chancery*, and that amongſt all the Orders of the *Chancery* to be found in the *Regiſters* books, there is ſo little mention of any extraordinary trouble in having them paid, and that the *coercive* power and authority of the *Court* and their proceſs, which in caſes of contempt, are (as they ought to be) ſharp, and as to the penalty to be paid upon them coſtly enough, do ſufficiently ſecure them from loſing of their coſts; and ſo the people of *England* may not be blamed, if they be yet unſatisfied, or demand a *reaſon* why for ſo ſmall an *inconvenience* as the not payment of coſts, which may happen to be awarded againſt leſs then 300 Plaintifs of ſix thouſand in

a yeer in *Chancery*, ſo great and Major a part of that number ſhould have the *gates* of Equity (which as a *City* or place of *refuge* (for ſo is the *Chancery* to many an oppreſſed man) ſhould be always open and the ways made plain and eaſie to it) ſhut up, or ſo ſtreightned or *Tenterhooked* as men ſhal not be able to come, or ſeek, or Petition for a remedy, or if they do, yet muſt take it with ſuch prejudice and inconveniences, as will make the remedy worſe then the diſeaſe, or why there ſhould be any neceſſity for it in a Court of Equity, when the ſeverity of the Law doth not at all deſire it, or why Recognizances ſhould now be entred into with one ſurety at the leaſt, when all our Predeceſſors ſince the Statute of 15 *H.6. c.4.* thought a Bond or Obligation, to be more then needed, or that ſo great a trouble and difficulty ſhould be put upon *Minors* or *Orphans* to have their Guardians, if they be plaintiffs to give ſecurity for them, when as defendants, is never demanded of them, or why there ſhould not be the ſame neceſſity (if there could be any at all for this order) that

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Plaintiffs at Law, or Petitioners to a *Juſtice* of Peace, or the *Officers* of the Army, Councel of State, the Lord *Protector* (for a *Chancery* Bill is but a *Supplication* or Petition) or to the *Parliament*, ſhould enter into a Recognizance with one ſurety at leaſt, to pay coſts if they ſhall be adjudged againſt them, before their Petitions ſhall be read, or why our *Balm* of Gilead, or Laws ſhould be with ſuch difficulties imparted to us, or ſo great a care for ſmall inconſiderable ſums which ſhall happen to be given for coſts, and no Recognizance at all to be entred into by the Defendants to ſtand to the Order of the Court, for what ſhall be decreed againſt them, and whether this order for entring into the Recognizances wil not bring a greater delay or charge upon the people, or be leſs binding upon the plaintiff, then the ordinary way of proceſs of contempt, for if the coſts be not paid, there wil be trouble and motions (if, as Recognizances uſe to be in *Chancery*, they ſhall be acknowledged to the Maſter of the Rolles, and the eldeſt Maſter of the Chancery) to transfer them

over

over to the uſe of the Defendants, and the proces upon a recognizance, being a *Scire Fac'* the recognizers may after a vacation imperlance, appear and plead to it, and ſo help the Defendant to another ſuit, and when there ſhall be judgment upon it, and an Extent, it can reach but to the moyety of their Lands or Goods, which the Defendant in *Chancery* may eſpecially where Goods or Lands may not be found, or ſhall be concealed or incumbred) find to be the longeſt and worſer way to recover their coſtes, beſides, thoſe many inconveniences will be caſt upon the poor Cõplainants or Plaintiffs in *Chancery*, who being for the moſt part ſuch as have been Defendants at Law, and come thither for ſuccour, and to have that equitable examination of their Cauſe and grievance, the ſtrict rules of the *Common-Law* (which unleſs we ſhould make our Judges and Courts of Common-Law to be Arbitrary, which cannot be certainly, for the people muſt of neceſſity be ſo) muſt either be forced to lye down and deliver themſelves up to the unmercifulneſs of a

hard

hearted Creditor or oppreſſor, or to run into a miſchief almoſt equal to it, for men of diſtreſs (and ſuch are many who come thither) who have ſadly experimented the trouble of procuring men to be bound for them, and perhaps needed not to have come into the danger of the *Common Law*, or to be torn in pieces by ſome cruel uſerer or man of advantage, if they could have gotten ſecurity or have borrowed mony upon it, can eaſily reſolve how hard a matter it will be for a man that is worth ten pounds (which is but a ſmall remove from a *forma pauperis*) and is to ſue for a matter or concernment, but of five pounds to get a friend to enter into a Recognizance with him, when every one hath not abilities to judge of a Cauſe beforehand, and if they had for want of knowledge of the proofs on the other ſide, may well be diffident or miſtaken in the ſucceſs or event of it, and when he that will enter ſecurity for his friend in a Bond, will though he ſhould be of a far greater eſtate, be unwilling, or not at all drawn to enter into a Recognizance or Judgement,

which ſhall remain upon a Record, as a burden upon his eſtate, what an Addition it may be to a mans *affliction* that hath not friends at hand or cal, to be bound with him, to pawn, ſell, or mortgage that little he hath, upon great diſadvantage to give him counter ſecurity, & what arts or threatnings may be uſed by the *Nimrods* or oppreſſors of ſuch as they find in neceſſity, to deter men from ingaging for them, and beſides the trouble and charge of vacating the Recognizance when the Coſts ſhall be paid, which by the new regulated fee, is ſix ſhillings 8 pence, how prejudicial it may be almoſt to every man, not to be able to ſue for relief in *Chancery*, unleſs he can intangle and imbarque a friend or neighbor in it, or be otherwiſe conſtrained to give ſhares or parts out of the ſuit or thing ſought for, to Sollicitors or ſuch as can tell how to loſe nothing by an unlawful *Champerty* or *maintenance* to become bound, in a recognizance, or procure others to do it for them. And whether ſuch an order injoyning the putting in of Recognizances before men ſhall be heard

heard in Equity, or have any relief by it, and will be as a dore ſhut againſt more then one *half* of the people, be not a *reſpecting of perſons in Judgement*, which God himſelf by a Law prohibits, *Deut.* 16. 19. or a greater ſin then that of not pleading for the truth, or calling for *Juſtice* which God himſelf by his Prophet enumerateth among thoſe ſins which ſeparated the people of *Iſrael* ſtom him, *Iſa.* 59 4.

And if there were not in the procuring of ſuch a ſecurity, beſides the drawing of men to be bound more for one another then otherwiſe they would, ſo many very great inconveniencies, and more which may yet diſcover themſelves, which were probably the reaſon why that great and wiſe *Lord Keeper* and Councellor of ſtate, Sir *Nicholas Bacon*, in the Reign of Queen *Elizabeth*, in his Ordinances and Regulation of the *Chancery*, appeared by the *Queen* and as ſage a Privy Counſel as any *Prince* before or ſince hath had the happineſs to conſult with, and that learned Lord Chancellor *Elleſmere* in his Regula-

tion alſo of the Chancery, that eminently learned Sir *Francis Bacon*, in the Reign of King *James*, that great and learned Lawyer the Lord Keeper *Coventry* in the Reign of the late King *Charles*, and the preſent Lords *Commiſſioners* in their ſeveral Regulations and better ordering of the Court of *Chancery* did omit this incumbring way of Recognizances, or of entring into leſſer ſecurity, according to that uſeleſs Statute of 15. *H* 6. though we cannot but believe that every one of theſe great Sages in the Law knew very well where to finde or turn to it, and that the project or ſuit in *Trin.* 2. *Jac: Regis* for taking of ſurety according to the ſaid Act prevailed not, being by the King, as Sir *Edward Coke* ſaith, referred to the Lord Chief Juſtice *Popham*, who upon conference with the reſt of the Judges reſolved that the Surety was by that Act to be by Bond or Obligation, and to be made to the party grieved, becauſe it concerneth his dammages, and the Court was to ſet down the form and ſumm of the Obligation.

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The delays, trouble, and charges which this order will bring upon them, will farr exceed the courſe that hath been heretofore held in the putting in of *Bils*, for when a *Subpena* might for expedition, and good of the Plaintiff, be taken out, and the *Bill* put in afterwards, and by that means many a cauſ was brought to an end & agreement before the *bill* came to be put in, amounting almoſt to a third part of as many as there be bils put into the Chancery in a year, as may be inſtanced in this laſt year, wherein of about 9000 *Subpenas ad reſpondendum*, that were taken out, there cam in but 6000 bils, but now the Plaintifs, beſides the trouble of putting in ſecurity, muſt in the ſaving of twelve pence fee in his *Subpena*, which he payes again for his recogniſance, be at 3 or 4 *l.* charge in putting in of his bill before hand, which many times might be ſaved, howſoever therefore though the delay of Juſtice goes but ſometing towards a denial of it, yet the ſtopping of the ſtream of it, which we hoped ſhould have run down our

ſtreets

ſtreets like Rivers, to water our Engliſh *Eden*, will, as to all that ſhall not be able to give ſecurity for it, which will be no ſmall number, be a meer denyal of Juſtice, grieve the *afflicted*, and be as a Law againſt the oppreſſed, and then our *Laws* will be to little purpoſe, called our *Birthright*, when we ſhall have no freer an acceſs unto them; and it will not be hard to gueſs, if ſuch a thing had been done in *Iſrael*, in the Government of good King *David*, what an ill uſe the naughty deſignes of *Abſalon* (which good men alwaies abhor) might have made of it, if when inſtead of what he then ſaid, *Thy matters are good and right, but there is none deputed of the King to hear thee*, he could have ſaid as now he might, thy matters are good and right; but unleſs you give *ſecurity*, or enter into a *recogniſance*, there will be none to hear you.

All which, and more inconveniences, which in a time of general poverty, when Wars and Taxes have ſo much undone or exhauſted the greater part of the people, will by the oppreſſion and covetouſneſs

of

of the rich, and miſeries of the poor, come to be daily complained of, may give us the reaſon why the Statute of 15 *H.* 6. that none ſhall ſue a *Subpena* untill he find ſurety to ſatisfie the Defendant his dammages, if he do not make good his Bill which, as plainly appears by the prayer of the *Commons* in the *Parliament*, 1 H. 4. that all perſonal actions betwixt party and party, might only be tryed by the common Law, and not otherwiſe; and in 2 *H.* 4, that none be kept from Juſtice by any Writ, or means obtained from the King by ſundry ſuggeſtions, on pain of twenty pounds to the obtainer of the ſame, and that no Writ of *Subpena* ſhould iſſue out of the *Chancery* for matters determinable at common Law upon pain of forty pounds to him that procured it and by the preamble of that very Statute, was onely for that, as it ſaith, the people were greatly troubled and vexed by Writs of *Subpena*, for matters determinable at the common Law, had not been fitting to have been put in excution, if the better and leſs troubleſome

Rot. Parl. 1 *H.n.* 1602.

Rot. Parl. 2 *H.* 4.*n.* 64. 69.

Rot. Parl. 3 *H.*6.*n.* 46.

some way of the Defendants demurring to such *Bils* had not, as it continues to this day altogether disused it, which in the Law is no more to be wondred at, then the laying by, or forbearing to put in practice that Law, of every mans being surety, or bound to bring oneanother to Justice in Tithing or Freeborgh in the *Saxon* times, or that of *Cover feu*, or puting out fire and candles at eight of the clock at night, or that of battail changed into Writs of *Assise*, and that of *Assise* now better done by Writs of *Ejectment*, nor to have an Act of *Parliament* out of use, remain unrepealed as these many Statutes yet in force, but unpractised, of shooting with *Bowes* and *Arrows*, with many other, our Acts of *Parliaments*, which by alteration of times, or by reason of other expedients, are either grown to be unnecessary, or not at all fit to be put in execution.

SECT. 4.

That the first Proces in Chancery be a Subpena, which shall be open, and that as many Defendants as the Plaintiff shall desire be inserted into the same, paying no more then One shilling and six pence for every Subpena to be thus distributed; six pence for the Seal, and twelve pence for the Officer.

THE sealing of the Writs of *Subpœna*'s close, is but as they have ever been, and as all the Writs and Commissions issuing out of *Chancery*, some few (as Writs of right *Patent*, and the like only excepted) have ever been, when they being writ in *Chancery* hand, which onely the *Clerks* of the Court could then write, were not so Counterfeitable, as they are now in the *Secretary* hand, which every one that can but write any thing, knows how to doe, and was never till now accompted inconvenient, either by the Parliament of *Ad Sect.* 4.

18 *E.* 3. that took care for the due examining of *Chancery* Writs; and that the Officers that made them ſhould put their names to them, to the end they might be avowed and not be counterfeited, or the Act of Parliament of 36 *E.* 3. for Pleas and proceedings in the Courts of Juſtice to be in the Latine tongue, or the late Act of Parliament for the making and writing of Writs and Pleadings in *Engliſh*, and the *Secretary* hand, or in any other Parliament or place where grievances have uſually ſought for redreſs. For that they being antiently and originally but as ſhort Letters or Miſſives, or Commands made out under the Great Seal, are by as much reaſon to be ſtill cloſed or made up under a ſeal, as the Letters of the *Lords Commiſſioners* of the Great Seal of *England*, which are now directed to *Earls* or *Barons* to appear in *Chancery*, the Letters of the Councel of State, or as many of the Writs of all Courts of Law and Juſtice were heretofore, as appeareth by the *phraſe* not yet gone out of the Law, of the *Sheriffs breaking up of Writs*; or as the Records

mus ſent out of the Courts of the Upper-Bench and Common-Pleas are to this day. And to thoſe that will but conſider the many Pleas of abatement to the *Teſtes* of writs, or for ſurpluſage, miſnoſmer, razure or interlineations in writs, with which former ages were troubled, (though by the wiſdom of later ages and ſeveral Statutes of *Jeofails* they are now altogether laid by) may not ſeem to have been heretofore out of *faſhion* in all other writs which the Courts at *Weſtminſter* have had occaſion to ſend forth; when being writen in diſtinct hands proper only to their ſeveral Courts, they were abundantly more ſecured from corruption or counterfeiting then now they are.

And when beſides what is obvious to ordinary underſtandings concerning the now greater poſſibility of counterfeiting, the Court of *Exchequer* hath been but the laſt yeare troubled with a Complaint brought unto them by the Clerks of the *Treaſurers* Remembrance, of ſeveral writs which were made out to levy mony as due

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to the State; when no ſuch ſums of mony were at all due, or writs made out of that *Office*: when the Green Seal of the Common-Pleas have been lately in great numbers counterfeited and affixed to blank Writs, for every ſharking or *knaviſh* fellow to fill up in what form, or with what names they pleaſed: when original writs in Chancery in perſonal or other actions, which are only to be made by the proper *Curſiſter* of the County wherein they are brought, though made up cloſe, have too often of late by the advantage of a *Secretary* or *common* hand-writing, in which they are now by a law ordered to be written, been counterfeited; and many *Subpenas* in a year, when they were not as they are now made in Secretary hand, have notwithſtanding the ſtamp or *mark* put upon them, and the watch and care of the Officer at every ſeal been able to eſcape it: And howſoever need not at all to be open, for the Label intimating the Plaintiff and Defendants name, and the Retorn or day of appearance doth carry as much, all but the words of form, as is contained in the body of it, and

and so is already as open as it needs to be; and if it should be more open, would but invite and give every one that is inclined to be wicked, a temptation or opportunity of altering or adding to the names of the Plaintiffs or Defendants, or the retorn or date thereof, which may be a great increase of trouble and vexation to the Plaintiffs or Defendants, or such as shall be concerned in it, more especially where any be made upon Orders, which may thereby come to be lessened, or inlarged, or misrecited, and in Subpœna's for costs be not a little beneficiall to shifting or knavish people to procure themselves at any time a sum of money (such Writs always commanding the money or costs to be paid to the bearer) by affrighting or abusing such part of the people as have not alwayes the skill or courage to withstand their devices; or if any of the mony be due, may be made more then in truth it is; and where the Clerks of the Office are now responsal to every one which shall suffer by any mistakes, and doe give satisfaction to them, shall in this way

of

some way of state, when no such sums of mony were at all due, or writs made out of that *Office*: when the Green Seal of the Common-Pleas have been lately in great numbers counterfeited and affixed to blank Writs, for every sharking or *knavish* fellow to fill up in what form, or with what names they pleased: when original writs in Chancery in personal or other actions, which are only to be made by the proper *Cursister* of the County wherein they are brought, though made up close, have too often of late by the advantage of a *Secretary* or *common* hand-writing, in which they are now by a law ordered to be written, been counterfeited; and many *Subpenas* in a year, when they were not as they are now made in Secretary hand, have notwithstanding the stamp or *mark* put upon them, and the watch and care of the Officer at every seal been able to escape it: And howsoever need not at all to be open, for the Label intimating the Plaintiff and Defendants name, and the Retorn or day of appearance doth carry as much, all but the words of form, as is contained in the body of it, and

and ſo is already as open as it needs to be; and if it ſhould be more open, would but invite and give every one that is inclined to be wicked, a temptation or opportunity of altering or adding to the names of the Plaintiffs or Defendants, or the retorn or date thereof, which may be a great increaſe of trouble and vexation to the Plaintiffs or Defendants, or ſuch as ſhall be concerned in it, more eſpecially where any be made upon Orders, which may thereby come to be leſſened, or inlarged, or miſrecited, and in Subpœna's for coſts be not a little beneficiall to ſhifting or knaviſh people to procure themſelves at any time a ſum of money (ſuch Writs always commanding the money or coſts to be paid to the bearer) by affrighting or abuſing ſuch part of the people as have not alwayes the skill or courage to withſtand their devices; or if any of the mony be due, may be made more then in truth it is; and where the Clerks of the Office are now reſponſal to every one which ſhall ſuffer by any miſtakes, and doe give ſatisfaction to them, ſhall in this way

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of making the Writs open, becauſe others may poſſibly have altered them, be never, or without much difficulty to be charged with it.

And may give us the reaſon why the publique Notaries in this as well as in other Nations where their Inſtruments or Writings are open, are enforced to fill up the ſides or blank parts of their Writings or Authenticques with ſome knots or ſtrokes of the Pen to prevent addition, and doe with a great deal of labour and trouble lodg their names in the Center of a ſtrangely compoſed Knot; that many men in moſt Nations think themſelves not ſafe enough in the ſubſcription of their Names to Letters, Deeds, or Writings, without ſome ænigmaticall Daſh or Knot added or put unto it, and doe ſometimes notwithſtanding pay dear enough for the Knavery of thoſe that can attain to the skil of counterfeiting it: And that every Committee Clerk findes it neceſſary to have ſome ſecret marks or characters put upon their Orders, which being in paper are nothing ſo capable of

that

that more ſure way of making up cloſe as the Writs are, which are to be in Parliament.

Wherefore when former Ages have hitherto taken no exceptions againſt it, there may be ſome cauſe certainly why a Court of Equity or Juſtice, whoſe Writings and Proceſs ſhould be more venerable and unalterable then thoſe which paſs in common and ordinary Tranſactions, ſhould rather deſire to retain their old and unqueſtionably more ſafe way, then goe into that which is ſo obnoxious and eaſie to all thoſe *Inconveniencies* they have hitherto for many ages paſt, ſo happily prevented; eſpecially in the Caſe of the *Subpænas*, where there are none, or very ſmall inconveniences can happen when the Writ is cloſe, and ſo many which may weigh down the ballance in the other end, when they are open.

As for the Fee of *twelve Pence*, which the Regulation ordaineth to be only taken for every *Subpæna*, and *ſix Pence* for the Seal thereof: It is to be conſidered, that

the Fee of *two Shillings* which was hitherto allowed for making of a *Subpæna*, is but what it was in 17 *Eliz.* now almoſt 80. years agoe; and for any thing appeareth to the contrary, was the ſame many years before; for the Grant or Letters Patents of Queen *Elizabeth* for the Erection of the Office in that year, ſaith, It was the Fee *ab Antiquo*, an Ancient and due Fee long before that time. And that the Fee of a Penny which was onely allowed for writing of Writs in the Courts of Law at *Weſtminſter* and in *Chancery*, by the ſtatute of *Weſtminſter*, the 2 *cap.* 44. which was almoſt Three hundred and Seventy years ago, was in the value of Money, and what might be had for it, a great deale more then the Fee of *two ſhillings* doth now amount unto, as may appear by the price and rates of Proviſion in 51 *H.* 3. not above 14 years before the making of that ſtatute; when a Quarter of *Wheat* might be bought for 3*s.* 4*d.* and two Gallons of *Ale* for a Penny, and by the Ordinance which King *E.* 2. did upon

Aſſiſa Panis & Cerviſiæ. 51 H. 3.

upon complaint of dearth and high prices afterwards make in the *Eight* year of his reign, which was but about 30 years after, and before the cheapneſs and *plenty* which by reaſon of the ſcarcenes of mony occaſioned by the warres with *France*, happened many years after in the reign of his ſon King *E.* 3. wherein he did order that no man ſhould take for a fat Oxe above 15s. for a Gooſe two pence halfpeny, for a fat Hog of 3 years old 3s 4d. and for a Capon 2d. And that the Fee of Three pence, to which that that of a Peny had within ſome few years after increaſed, in the reign of King *Edward* the Third would have gone further towards a Clark or Officers maintenance, then the now Fee of Two ſhillings, which is not now ſo much as the Fee of 2s. 4d. which by the Act of Parlament in the 22 year of K. *H.* 8 was allowed for the binding of Apprentices, which the Clerks of Halls or Companies in Cities or Corporations do now with litle trouble do by the help of blank and printed *Indentures*, nor as the Fee of *two Shillings* for the *Subpœna* was in 17

Eliz. which according to the difference betwixt what was then, and is now in the Rates and prizes of all things neceſſary for mans life, may be accompted to be much more then it is now, when every Gentleman in the Country makes as much, if not more then double of what his Anceſtor then made of the Rents and profits of his Land, and that every Day labourer takes now as much again for his work, as was then to be had for it, and that the Fee of *two Shillings* is and hath been time out of minde the allowed Fees of *Subpœna's* in the Courts of *Upper Bench*, *Common Pleas*, and *Exchequer*, and were not excepted againſt by the ſeverall *Commiſſions* to enquire of exacted Fees, which were made out in the Reign of the late King *Charles*, and is leſs then the Fee of Two *Shillings* and *Four pence*, beſides Six pence for the Seal, which is now taken by the under Clerks in the ſix *Clarks* Office for an Attachment, or the Fees of three Shillings and Foure pence which the Regulation alloweth for every *Diſtringas*, *Habeas Corpus*, and *Superſedeas*, and all things conſidered,

ſidered, is but proportionable to the labor, care, attendance and hazard which belongs to the Officer who makes them, if the dignity of the *Court* were no conſideration or cauſe why it ſhould be ſomthing more then it is in inferiour Courts.

For if the *Subpena* Office did but yearly heretofore make out Three thouſand Subpenas, which at two ſhlilings a writ would yield but 300l. *per annum*, and was in all probability about the time of the erection of the ſaid Office the utmoſt yearly number and profit of it, and which would then have gone as far, or have been neer as much in value as 500 *per annum* now; yet that, wth an accidental increaſ which might be thereof, was not ſurely then thought to it any overgreat reward for the continual attendance, and the pains, endeavour, and charge of the Officer, and his being reſponſal to any who ſhall be grieved by any errors or miſcarriages of the Clark.

And though the number be now increaſed and more then it was formerly, yet it may by an efflux of time, or by ſome accidents

cidents decay again into as ſmall a number or leſs then it was before: And upon that only conſideration, if there were no more to be ſaid for the preſent Officer, it wil be equity as well as reaſon, that he who with one and the ſame Fee is to undergo the loſs or diſadvantage which may happen by a leſſer number, ſhould enjoy any benefit or advantage which may com by a greater: Howſoever, if there could be any aſſurance or certainty, (as there can be none) that the number would alwayes be the ſame which it is now, yet would not the multitude or number, or increaſe of them is no more, nor ought to be a cauſe of abatement of the *Fee*, then it hath been hitherto in that and all other *Offices* belonging to the *Chancery*, or any Court of Law or Juſtice which do notwithſtanding retain their old Fees, or then it is or ought to be for *Gentlemen* or *Farmers* in the Country, to be inforced by any Law or *Ordinance* to abate their price of Corn, Hay, Sheep, or Cattle, becauſe God hath in that yeer multiplyed or given them an increaſ which

may

may in another be denyed them, or for a *Trades*-man or ſhopkeeper to be conſtrained to ſell his wares or commodities cheaper becauſe he hath a greater trade or cuſtom then another.

But that being not like to be *reaſon* or well taken by other men in their own affairs or particulars who claim a *property*, the profits of their own eſtates or induſtries is leaſt of all to be preſſed upon Officers in Courts of *Juſtice*, who being limited and bound up to a conſtant and reaſonable Fee, are forbid upon any pretence or neceſſity whatſoever, to take a farthing more then the Law allows them, though the price of Corn ſhould in one yeer be five ſhillings in a buſhel more then it hath been in another, and the rates of houſe-rent, cloths, ſervants wages, and victuals be four times more then it was in *17 El.* for that they have as much a *freehold* and property in their places, as any man in the Country hath of his Land, and by common Right and Equity (if there were no difference to be made, as there ought to be betwixt Mechanicks and thoſe

that

that are entituled to a more liberal Education) might claim as well as Citizens and other men, to enjoy the reward of their labours and industries, in taking as much as they can get, or think fitting for their endeavours, if they were not restrained to a certain fee, which being much for the good and benefit of the people (because that those who are at liberty to take what they can get, do most commonly ask and take more then those which are not. And the people are nevertheless well enough contented with it) ought to be so sufficient and reasonable, as they may be able to live upon their *employments*, and receive a comfort and encouragement by it, which will be too much lessened.

If every *Subpæna* should according as the Plaintiffs should have occasion to use them, have six names put into every Writ, for that then the *Fee* which is now given for half as many, would as to such Writs, if the Fee should be two shillings as it is now, be no more then one shilling, or if according to this Regulation it should be but twelve

pence

pence for every Writ, would then though almoſt double in the labor, yeeld the Officer but *Six pence*, which would be but half of the *Fee* which the Regulation aloweth; and too much exceed the number which in all Courts of Law and Iuſtice have been allowed to be put in a Writ for one and the ſame Fee. And if it ſhould be ordered to be otherwiſe in *Subpena's*, (which as to the number of names to be put in them are not, where the Writ is to be ſerved *perſonally*, ſo capable of a greater number of names to be put in them as other Writs are) wil bring more inconveniences to the people, then the ſaving of 12^{d}. after the Regulation way, or *two ſhillings* according to the old allowed Fee, can profit them: For if they take not Tickets to bear the Writ company, they muſt come back again, how far, or how much ſoever the diſtance or charge of ſending or ſervingof them do come to. And take five ſeveral Writs, for all but one of the *ſix* which was ſerved; for that where no authoriſed or ſigned *Tickets* ſhall go along with the body of the Writ,

there will be a neceſſity of leaving the writ itſelf with him that is ſerved with it, or elſe it is no good ſervice or execution of it: And ſo though all ſix of the Defendants could be commonly or poſſibly found in one houſe or place all together (which is not likely to be often) yet becauſe they ſhould every one of them have either the Writ, or a ſigned or authoriſed *Ticket* to inſtruct them of the day or time of their appearance, no *Attachment* or Proceſs of Contempt can upon their refuſal be made out againſt them.

As for the Accuſations which are deviſed and put together againſt the *Subpœna* Office by ſome few of the Under-*Clerks* in the *Chancery*, (for the greateſt part of them will not own their opinions or doings) that it is a *Monopoly*, and the Fee a *grievance*, & their deſign in offering to make the *Subpœna* for the Fee of 12d.

Thoſe that thus run up and down, and buſie themſelves, might with leſs expence of Time then will be beſtowed upon this Project, ſatisfie themſelves,

That

ing of Writs are only intruſted to particular Sworn *Officers*, and was never by any Law or Cuſtome of Courts truſted to *Attorneys* (which the now under Clerks are to be) who are not ſworn as to that particular, and doe ſo act and repreſent for their *Clients*, as that to permit them to make the Writs, were, and would be all one as to give a liberty to the Plaintiffs and Defendants themſelves to make what Writs they pleaſe in the name and authority of the Court one againſt another; and may doe well to conſider how unfitly the word grievance is by themſelves put upon the making of the *Subpœna's*, and the Fee of Two ſhillings taken for it, when they themſelves pretend it to be a Fee taken by their predeceſſors before the erection of the Office, and would now to take away other mens properties and eſtates, have it as touching half the Fee thereof to be no grievance at all.

That many of the Writs which the Curſiſtors doe now make, and which

were by the Ordinances of Sir *Nicholas Bacon*, Lord Keeper of the Great Seale of ENGLAND confirmed by Queen *Elizabeth* by her Letters Patents under the Great Seal of *England*, in the fifteenth year of her Raign, appropriate to their Offices, are not now to be claimed as a right either belonging to the Six *Clerkes* Office, or their *under Clerkes*, becauſe they formerly had the making of them; neither can the Maſters of *Chancery* now pretend a Title to the making of them, becauſe they were formerly to form and make them; and that what was done in the Erection of the *Subpœna* Office in as ſetled and happy a Government as ever *England* was bleſt with, in a time when *Monopolies* and Oppreſſion were *friendleſs*, is no more then that which hath anciently and legally been done in all other Courts and *Judicatories* in the diſtribution and better ordering of the buſineſs of them.

And that the word *Monopoly* being moſt properly and commonly applyed

to

to ſuch only as in the way of Trade doe ingroſs or procure the onely ſale of ſome *Merchandize* or *Commodities*, is neither according to the definition or originall ſignification of the word, or the nature or uſe of it, to be fixed upon any Office in any Court of Law or Equity, and that the caſe of *Menopolies*, or the ſtatute of 21 *Jac* made againſt them, did never reach or extend to ſuch a kinde of conſtruction.

And if there had been no right in the firſt erecting or creation of this office, nor a juſt cauſ (as there was) for it, yet a peaceable poſſeſſion for ſo many yeers together without interuption hath begot us a right which might after ſixty yeers claim to be quiet. And as for their offer of doing the work cheaper, or making the Writs of *Subpæna* for leſs then the now eſtabliſhed Fee, there is no doubt but that they which have no right or property may better and more cheaply afford to do it, then thoſe that have it, or that he that hath no land of his own to let, may if he could be permitted, let Leaſes

of

of another mans Land, for a letter Fine or Rent, then he which is the right owner of it.

And that they thus propose to do another mans work or business cheaper, would be ill content to have the *Subpæna* Office, undertake to make the Writs of *Attachment* for twelve pence, for which the under-Clerks of the *Chancery* do now take two shillings and four pence, or if when they shall be Attorneys in the Six Clerks Office, they should have their business and imployment taken away from them, because their own Clerks or servants, or some Scriveners or common writers in Chancery-lane shall offer, or be well content to do it for less.